

encourage participation in the ULTS program. We will not bootstrap that requirement to make it mandatory that there be targeted marketing and outreach to non-English speaking persons for all of the carrier's services.

Customers whose first contact with a carrier was in English, should have no difficulty in accessing the bilingual customer service representatives of the carrier. Undoubtedly, given this state's diversity, there will be more than one non-English speaking customer per carrier. This diversity will necessitate that bilingual customer service representatives be on hand to serve these customers upon demand.

As we have previously expressed in prior decisions, we remain optimistic that carriers will recognize that tailoring products and services to particular market segments will be to the carriers' benefit. We must keep in mind that the customer base, which was formerly served by a monopoly LEC, may now be served by competing carriers. In order to attract the business of this finite group of customers, all carriers can be expected to compete vigorously for all customers. The offering of bilingual services will be a natural consequence of competition.

V. Consumer Information

A. Introduction

One of the principles enunciated in AB 3643 was that consumers should be able to have access to needed information in order to make timely and informed choices about telecommunications products and services, and how to best use them. To fulfill that principle, D.95-07-050 proposed the adoption of a matrix of certain information that all carriers of basic service be required to provide. The matrix proposed to include information about the cost of flat rate service, measured rate service, and ULTS.

B. Positions of the Parties

CAAT believes that the consumer information matrix proposed in D.95-07-050 needs to be expanded to meet the principle set forth in AB 3643. CAAT also recommends that a consumer education program, similar to the Telecommunications Education Trust, be created to inform and educate consumers about the changing telecommunications marketplace.

Consumer Action commented that the basic service matrix should be adopted. Consumer Action believes that other pricing packages may be developed in the future that the matrix needs to reflect. Consumer Action recommends that a workshop be held to consider the type of information that should be included in the matrix.

DRA endorses UCAN's and TURN's recommendations regarding the need for widely disseminated consumer information.

TURN commented that the proposed consumer information rules should be modified to provide the information suggested by UCAN. TURN recommends that the information about local service should be accompanied by a statement explaining the customer's local calling area, and that a toll free number be provided for customers inquiring about their local calling area. For measured service, carriers should provide their cost per minute, broken down by initial and additional minute, as well as any rate differentials based on time of day.

With respect to toll service, TURN recommends that carriers provide information about their undiscounted toll rates in a matrix similar to what has been recommended for measured rate service. Due to the complexity of discount calling plans, and the difficulty in comparing such plans, TURN does not propose to include them in the matrix at this time.

TURN also states that the matrix should include information about the other significant charges that customers may be required to pay, such as charges for returned checks, late

payments, changes to service, and reconnection after disconnection due to nonpayment.

UCAN commented that proposed rule 7 is limited as to the type of information that should be listed. UCAN recommends that the consumer information matrix include price information about per minute or sub-minute rates. In addition, because the local, toll, and long distance markets have been opened to competition, the matrix should include rate and service information for long distance and intraLATA toll calls. As new service offerings are made, UCAN favors expansion of the matrix to include rate and service information of these new services as well. UCAN also suggests that this rate and service information be set out before any discount, incentive, or packaged, pricing plan is included.

UCAN also disagrees with D.95-07-050 at page 73 that "other customer related information" should not be mandated at this time. UCAN believes that quality of service is a vital factor that consumers rely upon when shopping for a carrier. Thus, information about a carrier's complaint history should be disseminated to the public as well. UCAN believes that providing accurate complaint information about well known, as well as unknown carriers, will aid consumers in shopping for a carrier. UCAN also believes that this type of information is vital for the development of a competitive market because consumers will be able to objectively determine which carriers have had fewer complaints.

During the San Diego PPH, it was suggested by a speaker that the Commission consider drafting a "customer bill of rights." The type of items that the speaker contemplated as being included had to do with fraudulent use of telephone calling cards and pricing or service options to detect that type of activity, a centralized clearinghouse to answer questions about the type of services a carrier has been authorized to offer, Commission review and approval of carrier notices so that consumers can rely on the information contained therein, and obtaining a property owner's

permission before any utility related work is performed. Another speaker also expressed concern about the possible release of customer specific information. UCAN suggested in its December 1, 1995 reply comments that a set of consumer rights be developed. UCAN suggests that the rights cover the following categories: customer rate and service information, customer right to privacy, and the customer's right to redress.

C. Discussion

We have reviewed and considered the comments of the parties, and studied the matrix that was developed by UCAN in conjunction with TURN, and which was attached to UCAN's September 1, 1995 comments. We will adopt the matrix proposed by UCAN, with the exception of requiring carriers to have a toll free number to answer questions about a customer's local calling area, and whether a particular call is a toll or long distance call. We decline to adopt that suggestion at this time. Such a requirement could overburden the individual carriers with questions every time a customer considers making a telephone call to a different neighborhood or a different town or city. The consumer information rule in Rule 9 of Appendix B reflects the new matrix requirements.

As competition develops for local calls, toll calls, and long distance calls, new pricing packages are going to be introduced. This will present a problem for the customer information matrix because each carrier may offer a different type of program. CSD should conduct a workshop with interested parties to study ways in which these various pricing packages can be compared and included in the matrix.

As this Commission moves toward restructuring itself in light of the regulatory changes that have and are taking place, the complaint history idea of UCAN has some appeal. We will adopt UCAN's suggestion that the Commission annually compile a report that summarizes the complaint history for each certificated

carrier. This information is already in our database for tracking proceedings before the Commission.

This annual report shall contain the following for each certificated carrier: the name, address, and telephone number of each certificated carrier; the dates when the carrier was certificated by this Commission to offer local exchange, intraLATA toll service, and interLATA service; the total number of complaint cases filed against each carrier during the past year; the total number of residential and business customers; and the number of open complaint cases as of the close of the reporting period. For the time being, the Public Advisor's office shall be responsible for preparing this annual report, and disseminating it to the public. Copies of the report shall also be provided to the Commission, and transmitted by the Commission to the Legislature for their information. The first report should be available for dissemination on or about December 15, 1996, and cover the reporting period of July 1, 1995 to June 30, 1996. Subsequent annual reports should be available by August 1st of each year thereafter.

A consumer education program, as suggested by CAAT, is something the Commission needs to consider as well. As the Commission initiates steps to reform itself to meet the competitive environment of the future, consumer protection is likely to take on added importance in the Commission's mission and goals. With all of the regulatory and reorganization changes taking place, the Commission needs to consider taking proactive steps to inform the public about changes in the marketplace. We envision a public service media campaign, informational meetings before groups, and town hall meetings, where Commission staff can disseminate information about important consumer issues. To that end, we will direct the Commission's Executive Director to meet internally with the staff to develop possible solutions to meet these challenges. The Executive Director, in concert with the appropriate Commission

division(s), shall submit a plan of action to the Commission for approval. Such a plan should also include the fiscal impacts of implementing such a program.

VI. Benefits for Schools, Libraries, Health Care, and Community Based Organizations

A. Introduction

Two of the principles in AB 3643 express the intent that all customer segments, including certain kinds of institutions, benefit from the deployment of advanced telecommunications technology. Section 2.(b)(4) and 2.(b)(6) state as follows:

"(4) Public policy should provide incentives as needed to promote deployment of advanced telecommunications technology to all customer segments.

* * *

"(6) Because of their economic and social impact, education, health care, community, and government institutions must be positioned to be early recipients of the benefits of the information age." (AB 3643, Stats. 1994, Ch. 278, Sec. 2 (b).)

The Telco Act also provides that public or nonprofit health care providers serving rural areas, as well as elementary and secondary schools and libraries, should receive discounted rates. Section 254 (h)(1) of the Telco Act states as follows:

"(1) In general.

"(A) Health care providers for rural areas.--A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State.

A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

"(B) Educational providers and libraries.--All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall--

'(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

'(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.'"

In D.95-07-050 at page 14, we stated the following:

"We believe that education, health care, community, and government institutions should be in a position to benefit from the information age. Absent suggestions to the contrary, we believe this objective can best be achieved by creating and fostering the development of a competitive market. Potential

providers for this market must realize that making certain kinds of telecommunications services widely available to these institutions will increase demand, thereby encouraging the development of a market for these products and services.

"Another way to position these kinds of institutions to benefit from the information age is to provide for special rates. However, providing special rates to certain classes of customers, to the exclusion of others for the same type of services, may be contrary to PU Code § 453, and its prohibition against discriminatory rates and charges."

Before the start of evidentiary hearings, and after the Telco Act was signed into law, the assigned ALJ issued a ruling on February 21, 1996 directing parties to provide testimony on the Telco Act's requirement for funding of discounts for schools, libraries, and rural health care providers.

B. Positions of the Parties

AT&T/MCI take the position that the Telco Act left a lot of unanswered questions about how much of a discount should be subsidized. They recommend that the Commission wait to first see what the Federal Communications Commission (FCC) does with respect to this issue.

AT&T/MCI believe that only discounts below true economic cost or total service long run incremental cost (TSLRIC) are in need of subsidization.²⁵ They assert that there is no need to

²⁵ AT&T/MCI witness Cornell defined TSLRIC as the "forward-looking long run costs caused by supplying the total quantity of demand for the item whose costs are being estimated. The cost included in total service long run incremental costs can be both costs that vary with volume, and those that do not. Because they are long run costs, they include all categories of costs that are caused by the offering of the item in question. As forward-looking costs, they are calculated using the most efficient plant and equipment in the most efficient way."

subsidize prices above TSLRIC because the carrier's costs will already have been recovered. If subsidy funding of discounted rates at above the TSLRIC is permitted, AT&T/MCI believe that these subsidies could pose a threat to competitive entry into these markets.

The California Cable Television Association (CCTA) agrees with AT&T/MCI that the Commission should wait until after the FCC has resolved the schools, libraries, and rural health care providers issue. CCTA contends that ordering discounts before the FCC has resolved the issue could allow the incumbent LECs to use the subsidized discounts to delay competition and lock up customers before new entrants have the opportunity to offer a competing service.

Citizens commented that the need to provide advanced information age services to public and community institutions is a matter of social policy, which is best addressed by the Legislature, rather than this Commission. Therefore, Citizens believes that proposed rule 3.B.2 should be deleted because the Legislature has not adopted any social policy on this subject.

Due to the differences in the Telco Act regarding rural health care providers, and schools and libraries, DCA recommends that the Commission retain a distinction between the two types of subsidy funding.

With respect to discounted rates for schools and libraries, DCA is concerned that there is no direct evidence from any schools or libraries regarding what rates they believe are necessary to ensure affordable access. If the Commission decides to establish rates for schools and libraries without first seeking input from those entities, then DCA would support DRA's proposal for setting the discount rate. However, DCA advocates that additional steps should be taken to promote and foster broad deployment of advanced telecommunications and information services.

For rural health care providers, DCA contends that the use of the phrase, "reasonably comparable" rates, was intended to distinguish rate discounts for rural health care providers from the discounts for schools and libraries. DCA argues that a rate for a rural health care provider is reasonably comparable to the rate for services provided to urban health care providers if the rural health care providers' rate includes the additional costs, if any, incurred by the telecommunications provider to provide service to the rural area. Thus, DCA does not support DRA's proposal to provide rural health care providers with exactly the same subsidy as that which is provided to schools and libraries.

DCA also believes that the Commission should adopt policies that encourage the early deployment of a broadband telecommunications network for use by everyone. DCA recognizes that the Telco Act does not discuss access to advanced services by CBOs, but agrees with Public Advocates that CBOs will play a major role in determining the extent to which society will be divided between "information haves and have nots."

DRA proposes that the Commission adopt the following discount mechanism for rural health care providers, schools, and libraries. The discounted rate would be set at the TSLRIC of a measured business line (1MB) for the lowest cost density zone in whichever proxy cost model the Commission adopts. The carrier would then be provided with a subsidy that reflects the difference between what carriers normally charge, and the rate limit established by the Commission. DRA proposes that the subsidy be funded through the CHCF-B fund.

DRA recognizes MCI's concern that the incumbent LECs might act in an anti-competitive manner if subsidies were distributed before the FCC adopted final rules. Instead of delaying the discounts as MCI has suggested, DRA recommends going forward with the adoption of DRA's proposal, and that the Commission monitor the program to detect any abuses. DRA proposes

that after the FCC makes their determinations, the Commission can simply amend its discount methodology in an appropriate fashion.

GTEC points out in its brief that it has proposed a plan at the FCC which would provide funding sufficient to ensure that all schools and libraries in the country will be able to implement plans for advanced telecommunications programs.

Pacific's testimony noted that discounts for schools, libraries, and rural health care providers are mandated by the Telco Act, and that such discounts are to be funded by the federal universal service mechanism. Pacific points out that if this Commission develops a discount program which is in excess of the federal fund costs, then this Commission needs to approve a plan which provides for additional funding of the other groups. Pacific also believes that it should be permitted to receive funding for providing voluntary discounts to schools, even though Pacific initiated its own discount program voluntarily. Pacific's witness, Rex Mitchell, recommended that the Commission should wait to see what the FCC does, before making any decisions regarding these issues.

Public Advocates argues that access to advanced technology is the key to remaining competitive in the new information age. In order that certain communities are not left behind, Public Advocates recommends that CBOs, health clinics, educational organizations, schools, and libraries, be provided with access to enhanced telecommunications services which offer broadband capacity. Public Advocates contends that these types of institutions play a pivotal role in providing information access to underserved communities. CBOs are especially important in Public Advocates' view because the schools and libraries in low income, minority, and limited English speaking communities do not have the access that they do in more affluent communities.

Public Advocates recommends that at a minimum, this broadband capacity should consist of a twisted pair that has two

way digital capacity of 1.544 megabits per second (Mbps), or hybrid fiber/coax capacity. According to Public Advocates' witness, Thomas Hargadon, the cost for providing the equivalent of a T-1 line, which has a capacity of 1.544 Mbps, will soon be \$35 to \$50 per month. If 20,000 institutions are subsidized at this rate, the monthly rate is \$1 million per month. In addition to access, Public Advocates proposes that these institutions receive technical assistance as well. Public Advocates contends that these discounts should be implemented now, instead of waiting until the FCC takes action.

In Public Advocates' opening brief dated May 29, 1996, it proposed the following definition of what a CBO is:

"For purposes of obtaining access, a 'community-based organization' means any non-profit corporation or unincorporated association operating on a non-profit basis, whose primary commitment, as defined by its articles of incorporation, bylaws, or mission statement or as evidenced by demonstrated service, is to serve, directly or in an advocacy capacity, communities of individuals or groups, including, but not limited to low-income communities, minority communities, and limited English proficient communities. To obtain access, a community-based organization shall certify under penalty of perjury that it meets these requirements.

"For purposes of receiving lifeline rates, a 'community based organization' means any non-profit corporation or unincorporated association operating on a non-profit basis, whose primary commitment, as defined by its articles of incorporation, bylaws, or mission statement or as evidenced by demonstrated service, is to serve, directly or in an advocacy capacity, low-income communities of individuals or groups, including but not limited to minority communities and limited English proficient communities. To qualify for lifeline rates, a community based organization shall certify that the populations it or its member individuals or groups primarily service, directly or in an advocacy capacity, are

low-income individuals, as defined by the Public Utility Commission."

Public Advocates recognizes that the CBO definition specifically includes populations that it asserts have historically been underserved with respect to telecommunications. Public Advocates contends that the targeting of these communities is necessary because these communities are the least likely to have access to enhanced telecommunications services.

UCAN commented that CBOs should be positioned to benefit from advanced telecommunications technology. UCAN disagrees, however, with the discussion in D.95-07-050 that reliance on competition alone will make this a reality. UCAN is concerned that if the Commission relies solely on competition to ensure that these institutions receive access, the needs of these organizations and the communities that they serve will not be met.

C. Discussion

Following the issuance of D.95-07-050, the Telco Act was signed into law. The Telco Act specifically mentions that rural health care providers can receive telecommunications services which are necessary for the provisioning of health care services at rates reasonably comparable to the rates charged for similar services in urban areas. The Telco Act also provides for discounted rates for schools and libraries for any services that are within the Telco Act's definition of universal service. The Telco Act omits any reference about discounts to CBOs. Since the Telco Act requires discounts to certain kinds of institutions, we decline to adopt Citizens' suggestion that rule 3.B.2 be deleted.

Although AB 3643 does not mandate discounts for schools, libraries, rural health care providers, and CBOs, that legislation made clear that these types of organizations are to be positioned to be early recipients of the benefits of the information age, and that incentives should be provided to promote the deployment of advanced telecommunications services to all customer segments.

The first question that we need to address is whether we should wait until the FCC addresses these issues. The advantage of waiting is that this Commission can review what the FCC has done, and then adopt state rules that are consistent with the FCC's rules.

We do not believe that we should wait until the FCC adopts its rules with respect to discounts to school and libraries. The Telco Act provides that a state may adopt regulations that are not inconsistent with the FCC's rules, and that the state can provide for additional definitions and standards that preserve and advance universal service. (Telco Act, § 254(f).) AB 3643 took effect on January 1, 1995, and called for the opening of a proceeding to address universal service issues by February 1, 1995. If we were to wait until the FCC adopted its rules regarding discounts to schools and libraries, our rules on this subject could be delayed until May 1997, well beyond the time contemplated in AB 3643.

Before the discount programs can be established, we need to address the issues of who qualifies for the discount, what services qualify for the discount, and whether there should be a limit as to the number of lines or services that the institution is entitled to.

With respect to the discounts for schools, only public or nonprofit schools providing elementary or secondary education, i.e., grades K-12, and which do not have endowments of more than \$50 million may request the discounted rate. For libraries, only those libraries which are eligible for participation in state-based plans for funds under Title III of the Library Services and Construction Act (20 USC §335c et seq.) shall be eligible for the discounted rate. This adopted criteria is consistent with the Telco Act's criteria. (See Telco Act, § 254(h)(4) and 254(h)(5).)

As for the type of services that qualifying schools and libraries can subscribe to at a discounted rate, it is instructive

to refer to 254(h)(1)(B) of the Telco Act. That subsection provides that these kinds of institutions may receive "any of [the carriers'] services that are within the definition of universal service under subsection (c)(3)." Subsection 254(c)(3) provides as follows:

"(3) Special services.--In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purpose of subsection (h)."

Subsection 254(c)(1) describes what universal service is, and the considerations that are to be taken into account in defining the services that are to be supported by the federal universal service support mechanism. This subsection recognizes that the definition of services may evolve as a result of advances in telecommunications and information technologies and services.

Subsection 254(c)(1) appears to contemplate a set of service elements which make up universal service, similar to what we have done with respect to the definition of basic service for residential customers. In addition to the service elements that are to be developed by the Joint Board and the FCC, the FCC under subsection 254(c)(3) can designate additional services that are to be supported by the funding mechanism.

Although the FCC has not yet adopted what services can be provided at a discount to schools and libraries, we believe that at a minimum, it will include the service elements that make up a 1MB line. In recognition that there should be access to advanced telecommunications services, discounted rates for switched 56, ISDN, T-1, and DS-3, or their functional equivalents, are a strong possibility as well. (See Telco Act, § 254(b)(6).) We will therefore adopt a program of discounts for qualifying schools and libraries in Rule 8 of Appendix B. Qualifying schools and libraries shall be entitled to discounted rates for all 1MB,

switched 56, ISDN, T-1, and DS-3 services, or their functional equivalents.²⁶ Once the FCC adopts its rules regarding which services should be discounted, we will review those rules for consistency with the rules we adopt today.

DRA's suggestion for calculating the rate for schools and libraries is not feasible given the residential focus of the proxy cost models. Instead, we will set the rates for schools and libraries for services with speeds up to 1.544 Mbps at 25% below the tariffed rate for such services. For services with speeds greater than 1.544 Mbps, up to 44.736 Mbps, a discount at 20% below the tariffed rate will be allowed. Carriers who plan to offer these types of services shall file appropriate tariff sheets showing the discounted rate for schools and libraries and the speed of the service. Carriers who serve qualifying schools and libraries with these discounted services will receive a subsidy amount that represents the difference between the tariffed rate for businesses for such services, and the tariffed discount rate for schools and libraries. Nothing in our rules prevents schools and libraries from negotiating a better discount for these services with individual carriers. However, under such circumstances, the subsidy amount paid to the carrier will remain the same as the discounted tariff rate.

We believe that our discounted rate is appropriate and necessary to ensure that schools and libraries can afford access to these three services. By setting the discount at 25% for lower speed services and 20% for higher speed services, we want to avoid a situation where schools and libraries may oversubscribe to these kinds of services. For example, if the discount was raised to 40%

²⁶ Whether or not a service is the functional equivalent of the named service, shall be determined when the tariff sheets are filed.

or 50%, that might encourage more demand for the services, but the schools and libraries might not need that much capacity. By providing for these discounts, the students, the community, and society as a whole, benefits as well. The discounted rate also allows schools and libraries to be in a position that will make them early beneficiaries of advanced telecommunications and information services.

With respect to health care providers, the Telco Act provides that only those which serve persons in rural areas can obtain a rate that is reasonably comparable to rates charged for similar services in urban areas of the state. (Telco Act, § 254(h) (1) (A).)

We agree with DCA that the Telco Act intended to create a different rate discount for rural health care providers than the rate discount for schools and libraries. No one, however, submitted any evidence in this proceeding about what a reasonably comparable rate should be for a rural health care provider. Nor is there any evidence to suggest that health care providers in rural areas are currently charged different rates than their urban counterparts. We believe that the issue of reasonably comparable rates for rural health care providers should be deferred until the Joint Board and the FCC have had an opportunity to address this issue. In the interim, nothing prevents the carriers who provide service to rural health care providers from voluntarily offering discounted or free services to this customer group.

Turning now to the CBOs, we find merit in Public Advocates' suggestion that discounts be given to qualifying CBOs. CBOs, especially in low income and non-English speaking communities, oftentimes serves as meeting place for people in that community, or the CBO acts as an advocate on behalf of that community on issues of interest. By providing access to CBOs, we can position communities to take advantage of the benefits of the

information age, and promote access to the technology and information throughout the state.

Since there is no specific provision in the Telco Act that mandates discounts to CBOs, we will develop the following rules. In order to qualify for the CBO discount, the CBO must provide proof at the time of application that it is a public or private nonprofit organization. The CBO must also certify that it offers health care, job training, job placement, or educational instruction. This latter requirement ensures that the discounted telecommunications services are being used to directly or indirectly benefit the public at large, and that the discount is not being used simply to reduce the CBO's telecommunications expenses. This definition of a CBO also imposes a limit on the number of CBOs which can qualify, which in turn, minimizes overall funding costs.

The discounted services that shall be made available to qualifying CBOs shall consist of switched 56, ISDN or T-1 service, or their functional equivalents. The qualifying CBO shall be limited to a total of: two switched 56 lines; or two ISDN lines; or one switched 56 line and one ISDN line; or one T-1; at the discounted rate.

The discount for qualified CBOs shall be 25% off the tariff price for switched 56, ISDN and T-1 services, or their functional equivalents, offered to businesses. Carriers offering switched 56, ISDN, and T-1 services, or their functional equivalents, shall file tariffs reflecting that qualifying CBOs shall be entitled to this discounted rate. CBOs are free to negotiate better terms with the carriers. However, the carriers who serve qualifying CBOs with the discounted services, shall only receive a subsidy amount that represents the difference between the tariffed rate for businesses for such services, and the tariffed discount rate for CBOs.

Funding for these discount programs for schools and libraries, and CBOs, shall be incorporated into the CHCF-B fund. We will initially fund this program at \$20 million per year. \$5 million of the \$20 million shall be for the CBOs, and the remaining \$15 million will be set aside for schools and libraries. If the monies for the CBO discount are not used up during the year, that money shall be used to fund the discounts to schools and libraries during the following year. This estimate is based partly upon DRA's estimates that California has approximately 1000 libraries, and approximately 7800 public schools and 4100 private schools. Our estimate of qualifying CBOs is 2000. The SB 600 Task Force estimated that connection of a 56 kilobit circuit and a frame relay connection plus ongoing costs to serve 27 classrooms in each public school would cost approximately \$8 million a year.²⁷ The estimate also recognizes that schools and libraries may have multiple subsidized lines.

The Telecommunications Division staff shall monitor the estimate of the size of the discounts over the course of the coming year, and annually thereafter. The staff shall keep us informed as to whether adjustments to the estimate are needed.

As we noted earlier in this decision, the information superhighway is made up of many different interests and industries. In our capacity, we can provide the onramp to this highway at a discount. However, to make this highway accessible to all, and to ensure the success of this discount program, the telecommunications industry, computer and software manufacturers, and the information providers, must all take the lead and provide schools, libraries,

²⁷ See California SB 600 Task Force Telecommunications Infrastructure For K-12 Schools and Public Libraries, December 1995, p. 52.)

and CBOs, with the necessary equipment and services at no cost or substantially reduced prices.

To ensure that our rules are consistent with, and do not burden the FCC's rules, the Commission's Telecommunications Division shall review and compare the FCC's adopted rules with the rules we adopt today. If there are any inconsistencies between the two sets of rules, or with the federal and state funding mechanisms, the staff shall bring these problems to our attention. The issue of health care providers serving rural areas will be taken up after the FCC has addressed this issue.

VII. Funding of High Cost Areas

A. Background

In D.95-07-050 at pages 7 and 8, we discussed the mechanics of how high cost areas of the state have been funded in the past. We noted that in an era of competition, the incumbent LECs can no longer rely on internal subsidies between high cost and low cost exchanges, and price differences between services, to help fund the cost of providing universal service in high cost areas. Instead of a single monopoly provider responsible for providing universal service, there may soon be competing providers. As we noted in D.95-07-050:

"The funding mechanisms need to be redesigned to allow new market entrants access to universal service funds if they provide basic service to low income customers or to high cost areas. In addition, the mechanisms need to be changed to reflect the downward pressures on costs that competition should bring."
(D.95-07-050, p. 34.)

We laid the foundation for developing how to fund high cost areas in D.95-07-050 and D.95-12-021. The process for funding high cost areas of the state involves several steps, all of which have been the subject of much debate and controversy. The first

step, which we have described earlier in this decision, is to decide on which service elements make up residential basic service. Those service elements form the basis of the costing information that is developed in the second step.

The second step is to determine approximately how much it costs to provide basic service to the entire state. This step involves the use of a proxy cost model to develop statewide costs. Two proxy models have been presented to the Commission for consideration, the CPM sponsored by Pacific, and the HPM sponsored by AT&T and MCI.

The third step is to determine what the cut-off point, or benchmark, should be for deciding whether an area is high cost or low cost. The areas in which the proxy cost of providing service are at or exceed the benchmark would be deemed to be high cost areas and eligible for subsidy funding, and those proxy cost estimates which are below the benchmark would be considered low cost areas and not eligible for subsidy support.

The fourth step is then to determine whether any other sources of revenues which the carrier receives should be considered as offsets to the subsidy calculation. The fifth step is then to decide on the type of funding mechanism to be used. The sixth step is to decide whether any specific services or entities should be excluded from having to pay into the fund. The seventh step is to derive the surcharge amount. The final step is to determine what rates should be reduced in light of implicit subsidies being made explicit. In addition, there are some ancillary issues which need to be addressed, as well as other administrative details to consider, such as setting up the fund, and deciding who should administer the fund.

The sections below describe the steps that we have taken to ensure the continued availability of basic service in all areas of the state.

B. Should Business Customers Be Subsidized?**1. Introduction**

Some of the comments to the proposed rules in D.95-07-050 recommended that business customers in high cost areas should be included in the subsidy mechanism. In response to those comments, the assigned ALJ issued a ruling on February 21, 1996 directing the parties to include in their prepared testimony the additional costs associated with subsidizing business customers in high cost areas. Despite this request, none of the proponents of the proxy models included business customers in their modeling of costs.

2. Positions of the Parties

The Smaller Independent LECs object to the Commission's proposal to exclude business customers from the benefits of the universal service funding mechanism. They argue that failing to include businesses in the subsidy for high cost areas will have an adverse impact on the rural economies of the state. They argue that business customers will depart rural areas because of the higher cost of service.

The Smaller Independent LECs also argue that PU Code § 739.3 was designed to reduce the disparities between high and low cost areas, and that the statute's goal applies to business customers as well as residential customers.

Roseville also opposes the Commission's proposal to exclude business customers for many of the reasons articulated by the Smaller Independent LECs. In addition, Roseville contends that if there is no subsidy for the cost of business access lines, the Commission will need to adjust business rates to cost. In such a case, Roseville believes that the Commission needs to have hearings and to notice customers in connection with these rate increases.

Pacific's comments in response to D.95-07-050 disagree with the position of Roseville and the Smaller Independent LECs that business customers should be eligible for a subsidy. Although Pacific recognizes their concerns, Pacific states that including

business customers in high cost areas would increase funding requirements beyond the point of what a fund can bear.

For the evidentiary hearing, Pacific stated that because statewide averaged prices are currently mandated for business lines, business lines in high cost areas are being implicitly subsidized. Pacific proposed that until the Commission geographically deaverages prices for business lines, there should be subsidy funding for those areas where the costs exceed the mandated averaged price. However, according to Pacific's prepared testimony, it did not include any of the business service loop data in its model so that it could determine the required subsidy for business loops in high cost areas.

3. Discussion

Although we requested parties to provide information on the cost of providing businesses in high cost areas with service, no one presented any estimates of this cost during this proceeding. Due to this lack of information, and for the additional reasons we state below, the CHCF-B fund should not include the costs associated with serving business customers in high cost areas.²⁸

Pacific suggested in its comments to D.95-07-050 that if businesses in high cost areas were included in the CHCF-B funding mechanism, the fund size would become too large. We agree with Pacific that in deciding whether basic service for business customers located in high cost areas should be subsidized or not, the Commission must weigh the cost of such a subsidy, and the burden on ratepayers.

Although the rates for business telephone service usually cost more than residential service, it is difficult to imagine that the cost of a business telephone would be the deciding factor in whether a company should go into business or not. A business

²⁸ We also refrain at this time from listing all the service elements that make up basic service for a business customer.

telephone is just another inevitable cost of doing business for a company, and should not be subsidized. As we noted in D.94-09-065 at page 49, businesses can also pass this cost of doing business onto its customers.

Generally speaking, business customers tend to be more attractive to carriers than residential customers because businesses tend to make more toll and long distance calls. This attractiveness should lead multiple carriers to compete for business customers before similar competition reaches residential customers, resulting in lower prices for business customers. (See D.94-09-065, p. 49.)

For all of the above reasons, we decline to include in the CHCF-B fund the costs of providing telephone service to business customers in high cost areas.

C. The Small And Mid-Size LECs

1. Introduction

In D.95-07-050 at page 35, the Commission analyzed PU Code § 709.5, and stated that: "Unless PU Code § 709.5 is amended to exempt the smaller LECs from local exchange competition, it is our belief that our redesign of universal service must apply statewide." It was from that point of view that we stated in D.95-12-021 that the proxy cost study should be developed for all of California. We also allowed the smaller and mid-size LECs to propose alternative proxy cost models in the event the other models do not adequately reflect their costs.

There are currently seventeen smaller LECs, three mid-size LECs, and two large LECs, in California.²⁹

²⁹ One of the three mid-size LECs, Contel of California, Inc. (Contel), will soon have its operations merged with GTEC. (See D.96-04-053.)

2. Positions of the Parties

AT&T/MCI note in footnote 4 of their opening brief that reform of the existing universal service funding mechanisms does not necessitate the immediate elimination of the existing CHCF for the smaller LECs. AT&T/MCI believe that a fund which addresses the need for subsidies for the large and mid-size LECs is sufficient to create a more competitive telecommunications market.

Citizens' position represents the views of all its subsidiaries. Of the two proxy models presented in this proceeding, Citizens recommends that the CPM be adopted. However, Citizens recommends that the CPM incorporate more company specific data for the mid-size and smaller LECs.

In Pacific's comments to D.95-07-050, it stated that the smaller LECs should be handled separately from the large and mid-size LECs because the smaller LECs will not be immediately faced with competition. Including the smaller LECs may require an inordinate amount of Commission resources, which is not justified given the small number of lines that they operate. Pacific asserts that the existing CHCF should be left in place to handle the smaller LECs until they actually face competition and the new CHCF-B fund has undergone actual use.

The Small LECs recommend that the Commission should not adopt the HPM or the CPM for the smaller LECs. The Small LECs contend that neither of the models produced information that closely reflect the actual costs that the smaller LECs encounter on a daily basis. Unlike the large and mid-size LECs, the smaller LECs remain under rate of return regulation. General rate cases (GRCs) for all seventeen of the smaller LECs are currently pending before the Commission. The GRCs will determine the actual costs incurred by each of the smaller LECs, as well as determining the extent of interstate access and universal service revenues received by the company. The GRCs will also determine the companies'